UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No.:

02-21473

**CIV-KING** 

MAGISTRATE JUDGE O'SULLIVAN

ADVOCATING DISABILITY RIGHTS, INC., a Florida not-forprofit corporation, and CARLISLE WILSON, Individually

Plaintiffs,

VS.

GET WIRELESS, INC.,

Defendants.

COMPLAINT

(Temporary and Permanent Injunctive Relief

Demanded)

Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC., a Florida not-for-profit corporation, and CARLISLE WILSON, Individually (sometimes jointly referred to herein as "Plaintiff") sue the defendant(s), GET WIRELESS, INC., (sometimes referred to as "Defendant") for Injunctive Relief, Attorneys' Fees, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq, ("ADA") and in support state:

- Defendant, owns; or leases; or leases to; or operates a place of public accommodation as defined by the ADA and the regulations implementing the ADA 28 CFR 36.201(a) and 36.104. Defendant is responsible for complying with the obligations of the ADA. The place of public accommodation that the Defendant owns, operates, leases or leases to is known as and is located at:

  3540 Coral Way, Miami, Florida.
- Defendant has discriminated and is discriminating against the Plaintiff in violation
  of the ADA by failing to, inter alia, have accessible facilities as described below
  by January 26, 1992 (or January 26, 1993 if defendant has 10 of fewer

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employees and gross receipts of \$500,000 or less):

- Parking does not comply with the Americans with Disabilities Act
   Architectural Guidelines (ADAAG) Sec. 4.6.
- b. Accessible routes do not comply with ADAAG Sec. 4.3.
- c. Bathrooms do not comply with ADAAG § 4.16 4.19.
- d. The discriminatory violations described above are not an exclusive list of the Defendant's ADA violations. Plaintiff requires an inspection of the Defendant's place of public accommodation in order to determine all of the discriminatory acts violating the ADA.

## JURISDICTION AND VENUE

- 3. This action arises from a violation of Title III of the Americans With Disabilities Act, 42 U.S.C. § 12181, et seq, as more fully set forth herein. This Court has original jurisdiction pursuant to 28 U.S.C. § and 28 U.S.C. § 1343.
- 4. Venue lies in this district as the property which is the subject matter of this claim is located in this judicial district, and the Defendant is doing business in this judicial district.

## STATUTORY BACKGROUND

- 5. On July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990, establishing important civil rights for individuals with disabilities, including the right to full and equal enjoyment of the goods, services, facilities, privileges, and access to places of public accommodations.
- 6. Pursuant to U.S.C. § 12182 and 28 CFR 36.201(a), no place of public

- accommodation shall discriminate against an individual, on the basis of such individual's disability, with regard to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at that place of public accommodation.
- 7. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993, if the Defendant has ten (10) or fewer employees and gross receipts of \$500,000.00 or less. 42U.S.C. 12181;28 CFR 36.508(a).
- 8. Plaintiff, Carlisle Wilson, is a resident of Ft. Lauderdale in Broward County, Florida. Plaintiff is disabled as defined by the ADA since his movements are restricted to a wheelchair.
- 9. Plaintiff, Carlisle Wilson, is a founding member and officer of Advocating Disability Rights, Inc., ("ADR"). ADR's primary purpose is to seek enforcement and compliance of improved real property with the ADA in areas where its members live and travel since they have and/or want to avail themselves on such improved real property for services and goods which are available to the public at large but have been and are restricted to people, like Carlisle Wilson, with disabilities because of illegal architectural barriers.
- 10. Plaintiff, Carlisle Wilson, became aware of Defendant's non-compliance of the ADA when he visited the Property on several occasions in 2001. Plaintiff plans on returning to the subject property to avail himself of the goods and services being offered at the property.
- 11. The barriers described herein have effectively denied and/or diminished
  Plaintiffs' ability to visit and/or use the property and have endangered Plaintiff's

safety and the safety of other disabled persons who also visit and/or may want to visit the property. For example, because Defendant does not have proper disabled parking or pathways leading to the property, Plaintiffs and other disabled persons have an increased risk of injury by being hit by oncoming motorists. Also, because the property does not have a ramp required and/or in compliance with the ADA, Plaintiffs and other disabled persons have an increased chance of bodily injury when entering and exiting the property.

12. Based on the above, the members of ADR, and other disabled persons have a realistic, credible, existing, and continuing threat of discrimination from Defendant's non-compliance of the ADA with respect to the property at issue as alleged above.

# THE PARTIES AND STANDING

13. Plaintiff, ADVOCATING DISABILITY RIGHTS, INC., is a non-profit Florida corporation. The members of this organization include individuals with disabilities as defined by the ADA. This organization's purpose is to represent its members interests by assuring that places of public accommodation are accessible to and usable by the disabled and that its members are not discriminated against because of their disabilities. Plaintiff, and its members, have suffered and will continue to suffer direct and indirect injury as a result of the Defendant's discrimination until Defendant is compelled to comply with the requirements of the ADA. ADVOCATING DISABILITY RIGHTS, INC., has also been discriminated against because of its association with its disabled members

- and their claims.
- 14. Plaintiff, CARLISLE WILSON, is a Florida resident, is sui juris and qualifies as an individual with disabilities as defined by the ADA.
- 15. Plaintiffs have reasonable grounds to believe that they are and will continue to be subjected to discrimination in violation of the ADA by the Defendant.

## THE INSTANT CLAIM

- 16. Defendant is required to remove architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that has existed prior to January 26, 1992, 28CFR § 36.304(a); in the alternative, if there has been an alteration to Defendant's place of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the defendant's facility is one which was designed and constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then the Defendant's facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.
- 17. Appendix A to Part 36- Standards for Accessible Design (28CFR pt. 36, App. A) sets out guidelines for accessibility for buildings and facilities. These guidelines are to be applied during design, construction and alteration of such buildings and facilities to the extent required by regulations issued by Federal Agencies,

- including the Department of Justice, under the ADA.
- 18. Defendant has discriminated against the individual and corporate Plaintiffs by denying them access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and or accommodations of its place of public accommodations or commercial facility in violation of 42 U.S.C. §12181 et seq., and 28 CFR § 36.302 et seq, as described herein.
- 19. The correction of these violations of the ADA is readily achievable or the Defendant is obligated to have its place of public accommodation readily accessible as defined by the ADA.
- 20. Plaintiffs have retained the undersigned counsel and are obligated to pay reasonable Attorneys' Fees including costs and expenses incurred in this action. Plaintiffs are entitled to recover these Attorney's Fees, costs and expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR §36.505.
- 21. Notice to Defendant is not required as a result of the Defendants failure to cure the violation by January 26, 1992 (or January 26, 1993 if Defendant has 10 or fewer employees and gross receipts of \$500,000. or less). All other conditions precedent have been met by Plaintiff or waived by the Defendant.
- 22. Plaintiff's are without adequate remedy at law and are suffering irreparable harm.
- 23. Pursuant to 42 U.S.C § 12188, this Court is provided authority to grant Plaintiffs Injunctive Relief including an order to alter the Defendant's facility to make those facilities readily accessible to the Plaintiff and all other persons with disabilities as defined by the ADA; or by closing the facility either temporary or permanently until such time as the defendant cures its violation of the ADA.

WHEREFORE, Plaintiff respectfully requests:

- A temporary injunction and a permanent injunction providing for injunctive a. relief against the Defendant including an order to make all readily achievable alterations to the facility; or to make such facility readily accessible to and usable by individuals with disabilities tot he extent required by the ADA.
- b. An award of Attorney's Fees, costs and litigation expense pursuant to 42 U.S.C. §12205.
  - Such other relief as the Court deems just and proper. C.

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Fla. Bar No. 865753

By:

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JS 44 Case 1:02-cv-21473-JLK Document 1 Entered on FLSD Docket 05/16/1002 Pogt 8 48 7 3 CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as requi

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□ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act B□ 152 Recovery of Defaulted Student Loans □ Excl. Veterans. B□ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockhorders Suits □ 190 Other Contract □ 195 Contract Product Crability  A REAL PROPERTY □ 210 Land Condemnation B□ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Tofts to Land □ 245 Toft Product Liability	□ 315 Airplane Product Liability □ 320 Assault Libel & Slander □ 330 Federal Employers Liability □ 340 Manne □ 345 Manne Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle □ 355 Motor Vehicle □ 360 Other Personal Injury ■ ACIVIL RIGHTS □ 441 Voting □ 442 Employment □ 443 Housing □ 442 Employment □ 444 Welfare □ 440 Other Civil Rights ■ 440 Other Civil Rights	Med Malpradi  365 Personal Injury Product Liabilit  368 Asbestos Perso Injury Product 1  7 PERSONAL PROPE  370 Other Fraud  371 Truth in Lendin  380 Other Personal  Property Dama Product Liabilit  PRISONER PETI  B 510 Motions to vac Sentence HABEAS CORPUS  B 530 General  A 535 Death Penalty B 540 Mandamus & C B 550 Owil Rights B 555 Prison Conditiv	tice (Ty onal Liability  ERTY  g age age ty  TIONS  ate :	B 625 Drug Related Selzure of Property 21 USC 881 B 630 Lugor Laws B 640 R R & Truck B 650 Artine Regs B 650 Occupational Safety/Health B 690 Other  A LABOR  710 Fair Labor Standards Act 720 Labor Mgmt Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl Ret Inc Security Act	28	USC 157  RTY RIGHTS  pyrights ent demark  LL SECURITY  1395ff; ck Lung 1923. VC DIWW (405:g); D Title XVI (405:g); L TAX SUITS  es (U S Plaintiff Defendant) - Third Party USC 7609	430 Banks and Banking   450 Commerce/ICC Rates/etc   460 Deporation   470 Racketeer Influenced and Corrupt Organizations   810 Setective Service   850 Securities/Commodities/Exchange   875 Customer Challenge   12 USC 3410   891 Agricultural Acts   892 Economic Stabilization Act   893 Environmental Matters   894 Energy Alfocation Act   895 Freedom of Information Act   990 Appeal of Fee Determination Under Equal Access to Justice   990 Constitutionality of State Statutes
□ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act ■ 152 Recovery of Defaulted Student Loans □ 53 Recovery of Overpayment of Veteran's Benefits □ 160 Stockhorders Suits □ 190 Other Contract □ 195 Contract Product Crability  A REAL PROPERTY □ 210 Land Condemnation 8□ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torfs to Land □ 245 Torf Product Liability □ 290 All Other Real Property	□ 315 Airplane Product Liability □ 320 Assault Libel & Slander □ 330 Federal Employers Liability □ 340 Marine □ 345 Marine Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle □ 355 Motor Vehicle □ 356 Other Personal Injury □ 441 Voting □ 442 Employment □ 443 Housing Accommodations □ 444 Welfare □ 440 Other Civil Rights  N (CITE THE U.S. CIVIL STA DO NOT CITE JURISDICT	Med Malpraci  365 Personal Injury Product Liabilit  368 Asbestos Personal Injury Product  7 PERSONAL PROPE  370 Other Fraud  371 Truth in Lendin  380 Other Personal Properly Dama Product Liabilit  PRISONER PETI  B 510 Motions to vac Sentence HABEAS CORPUS B 530 Generial A 535 Death Penalty B 540 Mandamus & Correll B 540 Correll B 550 Carrill Rights B 555 Prison Condition  TUTE UNDER WHICH YOUTONAL STATUTES UNLES	tice (I)	## 625 Drug Related Selzure of Property 21 USC 881 ## 630 Liquor Laws ## 640 R R & Truck ## 650 Aritine Regs ## 650 Octopational Safety/Health ## 650 Other  ## A LABOR  ## 710 Fair Labor Standards Act ## 720 Labor Mgmt Relations ## 730 Labor Mgmt Reporting & Disclosure Act ## 740 Railway Labor Act ## 750 Other Labor Litigation ## 751 Empl Ret Inc Security Act  ## 752 USC AND WRITE BRIEF STATEMENTY)	28  A PROPE	USC 157  RTY RIGHTS  pyrights ent demark  L SECURITY  L 1395ft; or Lung 1923  VC DIWW 1405/gri L TAX SUITS  es (U S Plaintiff Defendant) = Third Party USC 7609	□ 430 Banks and Banking B□ 450 Commerce/ICC Rates/etc □ 460 Deportation □ 470 Racketeer influenced and Corrupt Organizations □ 810 Selective Service □ 850 Securities/Commodities/Exchange □ 875 Customer Challenge 12 USC 3410 □ 891 Agricultural Acts □ 892 Seconomic Stabilization Act □ 893 Energy Alfocation Act □ 895 Freedom of information Act □ 900 Appeal of Fee Determination under Equal Access to Justice □ 950 Constitutionality of State Statutes □ 890 Other Statutory Actions □ 12 OR B
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130 Miller Act   140 Negotiable Instrument   150 Recovery of Overpayment & Enforcement of Judgment   151 Medicare Act   151 Medicare Act   152 Recovery of Defaulted Student Loans   Excl. Veterans.   153 Recovery of Overpayment of Veterans & Benefits   160 Stocknoiders Suits   190 Other Contract   195 Contract Product Liability   A REAL PROPERTY   210 Land Condemnation   180 220 Foreclosure   230 Rent Lease & Ejectment   240 Torts to Land   245 Tort Product Liability   290 All Other Real Property   VI. CAUSE OF ACTIO   2 U.S.C. § 1 2 1 8   240 Fored Cause   250 Foreclosure   250 Rent Lease & Ejectment   250 Rent Lease & Ejectment   250 All Other Real Property   250 Rent Other Rent Other Real Property   250 Rent Other Rent Ot	□ 315 Airplane Product Liability □ 320 Assault Libel & Slander □ 330 Federal Employers Liability □ 340 Marine □ 345 Marine Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle □ 355 Motor Vehicle □ 356 Motor Vehicle □ 356 Motor Vehicle □ 357 Motor Vehicle □ 358 Motor Vehicle □ 358 Motor Vehicle □ 359 Motor Vehicle □ 360 Other Personal Injury  A CIVIL RIGHTS □ 441 Voting □ 442 Employment □ 443 Housing-Accommodations □ 444 Welfare □ 440 Other Civil Rights  N (CITE THE U.S. CIVIL STA DO NOT CITE JURISDICT  361 (Americans □ 1 Americans □ 1 Americans □ 1 Americans □ 1 Americans	Med Malpradic   365 Personal Injury Product Liabilit   368 Asbestos Personal Properties   370 Other Fraud   371 Truth in Leridin   380 Other Personal Property Dama   385 Death Penalty   385 Death Penalty   385 Prison Conditional STATUTES UNLES   385 Prison Condition	tice (ity ponal Liability  ERTY  Ig age age ty  TIONS  ate  UARE FIL SS DIVERS  a bil ief,	B 625 Drug Related Seizure of Property 21 USC 881 B 630 Liquor Laws B 650 Arline Regs B 650 Occupational Safety/Health B 690 Other  A LABOR  710 Fair Labor Standards Act 720 Labor Mgmt Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation A 791 Empl Ret Inc Security Act  NG AND WRITE BRIEF STATEME SITY;  ities Act of Attorneys for	28   A PROPE     820 Cop   830 Pat   840 Trai   840 Trai   840 Trai   862 Bita   863 Div   865 RSi   865 RSi   867 RSi   871 IRS   26   871 IRS   871 IRS	USC 157  RTY RIGHTS  pyrights ent demark  LL SECURITY  L. 1395ff. Cor Lung 1923. VC DIWW (405:gr) D Title XVI (405:gr) LL TAX SUITS es (US Plaintiff Defendant) - Third Party USC 7609  E  COSTS.	430 Banks and Banking
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